

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTOINE NATHANIEL JACKSON,

Defendant-Appellant.

UNPUBLISHED

September 19, 2006

No. 260820

Oakland Circuit Court

LC No. 2002-187937-FC

Before: Davis, P.J., and Murphy and Schuette, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a), and sentenced to life imprisonment without parole. He appeals as of right. We affirm.

Defendant's conviction arises from the beating and asphyxiation death of defendant's 79-year-old grandfather, Harvey Brooks.

Defendant first argues that the trial court erred in denying his motion to suppress his statements to the police. Defendant maintains that his statements were not made voluntarily, and that he was not advised of his *Miranda*¹ rights before giving his third statement.

To establish a valid waiver of a defendant's *Miranda* rights, "the state must present evidence sufficient to demonstrate that the accused understood that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him." *People v Daoud*, 462 Mich 621, 637; 614 NW2d 152 (2000) (citations omitted). "The test of voluntariness is whether considering the totality of all the surrounding circumstances, the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused's will has been overborne and his capacity for self-determination critically impaired." *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997) (internal quotations and citation omitted). This Court defers "to the trial court's superior ability to view the evidence and witnesses and will not disturb its factual findings unless they are clearly erroneous." *Id.*

¹ *Miranda v Arizona*, 384 US 436, 479; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

In determining whether a statement is voluntary, a trial court should consider the following factors: the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

The record discloses that defendant gave four different custodial statements during a three-day period after his arrest. He was advised of his *Miranda* rights before the initial police interview. Defendant initialed and signed the advice of rights form, appeared to understand his rights, waived those rights, and agreed to give a statement. Although defendant was not readvised of his *Miranda* rights before he gave his third statement, the police are not required to give a suspect *Miranda* warnings each time he is questioned. *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992); *People v Godboldo*, 158 Mich App 603, 605; 405 NW2d 114 (1986). Defendant did not appear to be injured, in poor health, or under the influence of drugs or alcohol, and he had no problem talking or communicating. Although defendant testified that he was injured, he agreed that he told the detectives that he did not have any emergency medical problem and that there were no visible bruises. Defendant also agreed that his injuries did not prevent him from understanding what was occurring. Defendant claimed that he was not offered any food during the interviews. The trial court questioned the credibility of this claim, but observed that defendant admitted that he never told the officers he was hungry. Also, defendant admitted that he was given water and a Coke, which he thought would “suffice,” and was allowed to use the bathroom several times. Defendant claimed that he was placed in a cell without a mattress and had not had any sleep, but there was no evidence that he ever complained to the police about any discomfort. Defendant acknowledged that he was aware that he had a right to an attorney. Defendant was 19 years old and had prior experience with the criminal justice system. He had some college education and appeared to the trial court to be intelligent. Throughout the interview process, defendant was cooperative with the police and never indicated that he wanted to stop any of the interviews.

Giving the appropriate deference to the trial court’s reasonable findings, and viewing the totality of the circumstances, the record establishes that defendant’s statements were the product of his own free will. The trial court did not err in denying defendant’s motion to suppress his statements.

Defendant also argues that the prosecutor’s conduct denied him a fair trial. Prosecutorial misconduct issues are decided case by case. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). This Court considers the prosecutor’s conduct in context to determine whether it denied the defendant a fair and impartial trial. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

Defendant argues that the prosecutor improperly vouched for the testimony of the detectives. A prosecutor may not vouch for the credibility of a witness by suggesting that he has some special knowledge that the witness is testifying truthfully. *People v Bahoda*, 448 Mich

261, 276; 531 NW2d 659 (1995). But a prosecutor may argue from the facts that the defendant or another witness is worthy or not worthy of belief. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

Because defendant did not object to the prosecutor's remarks, he must demonstrate that the remarks constituted plain error and affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *Schutte, supra* at 720. A plain error is one that is "clear or obvious." *Carines, supra* at 763. Viewed in context, it is not clear or obvious that the prosecutor was implying that either he or Detective Palmer had some special knowledge, unknown to the jury, of the truthfulness of Detective Palmer's belief that only defendant was involved in the murder of Brooks. Rather, the prosecutor's statements were made in the context of discussing the evidence presented at trial. The prosecutor was arguing that the evidence at trial showed that only defendant was involved in Brooks's murder. There was no plain error. To the extent that the remarks could be interpreted differently, reversal is not warranted because a timely instruction could have cured any perceived prejudice. *Schutte, supra* at 721. Indeed, the trial court instructed the jury that it was to "only consider the evidence that has been properly admitted" and that "[t]he lawyers' statements and their arguments . . . are not evidence." These instructions were sufficient to protect defendant's substantial rights.

Defendant also argues that the prosecutor tried to sway the jury with sympathy for the victim. Again, defendant's failure to object to the prosecutor's remarks limits our review to plain error affecting defendant's substantial rights. *Carines, supra* at 763.

Appeals to the jury to sympathize with the victim constitute improper argument. *People v Watson*, 245 Mich App 572, 591; 629 NW2d 411 (2001). Here, the prosecutor's remarks were made in the context of discussing premeditation. It appears that the prosecutor was arguing that Brooks's suffering should have alerted defendant to the consequences of his actions, thus allowing defendant an opportunity for a second look, and that defendant's continued conduct in the face of this suffering showed that he was acting with a premeditated intent to kill. Although the prosecutor used strong language, a prosecutor properly may use strong and emotional language in making his argument so long as it is supported by the evidence. *People v Ullah*, 216 Mich App 669, 678-679; 550 NW2d 568 (1996). Thus, the prosecutor's remarks did not constitute plain error. Moreover, to the extent that the remarks could be construed as an improper appeal for sympathy, reversal is not warranted because a cautionary instruction could have cured any perceived prejudice had one been requested. *Schutte, supra* at 721. In fact, the trial court later instructed the jury that it "must not let sympathy or prejudice influence your decision in any way." This instruction was sufficient to cure any perceived prejudice.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Bill Schuette